



Transportation
Security
Administration

November 28, 2018

3600.1

Case Number: 2019-TSFO-00061

Sai
MuckRock News
DEPT MR 62776
411A Highland Ave
Somerville, MA 02144-2516

Dear Sai:

This letter responds to your Freedom of Information Act (FOIA) request submitted to the Transportation Security Administration (TSA), via email, dated November 3, 2018, assigned request number 2019-TSFO-00061, for the following records:

“A. TSA records slated for destruction

Please provide (and preserve) all records that are or would be:

1. scheduled for destruction or disposal;
2. between November 3, 2018 and December 31, 2020;
3. by the TSA, including its components, contractors, agents, etc.;
4. pursuant to
 - a) any current disposition schedule,
 - b) any pending disposition
 - c) DAA-0560-2016-0006

I also request:

B. all records relating to the fulfillment of this request, such as FOIA logs, documentation of searches, referral emails, etc.

This part of the request is to be processed only after you have completed processing all of the above parts. This part does not request that you create any new record; rather, it requests the records that you will have created in processing the above parts, and will therefore exist before you conduct the search for this part. See *McGehee v. CIA*, 697 F. 2d 1095, 1100-05 (D.C. Cir. 1983) (agency must use time-of-search cut-off date, not time-of-request).

C. all records relating to any complaint(s), FOIA request(s)/appeal(s), and/or Privacy Act request(s)/appeal(s) made by me. This includes, but is not limited to:

1. all records relating to the processing my previous requests, complaints, etc;
2. all records containing the terms my name, email address(es), and other contact or identifying information, listed below my signature; and
3. all records containing any of my complaint, request or appeal identifiers.

Parts (B) and (C) must be processed only after you have processed the items above that line, i.e. such that at the time of the search, the records described will have already been created at the time you conduct the search. Part (C) must be processed after part (B) is completed.

Parts (B) and (C) may overlap with similar prior requests. However, the cut-off date is, at earliest, the date that you complete search on all of the above items. If you wish to administratively merge this request with a prior similar request, I consent on condition that you extend the cut-off date for the prior request, and provide rolling updates. Otherwise, you must treat this as a new request.

For all responsive records, I also request:

- D. all parts of the record (i.e. no portion of a record with some responsive portion may be considered "non-responsive");
- 2. all versions of the record, whether or not currently in use;
- 3. all record metadata, such as dates on which they were drafted, passed, went into effect, withdrawn, or similar events; person(s) / office(s) responsible; authors; IDs; revision numbers; etc.;
- 4. a detailed index of all claims of exemption/privilege, regardless of whether the record is claimed to be exempt in whole or in part;
- access to inspect the record directly, in its native electronic format; and
- 5. if any classification applies, mandatory declassification review (MDR) under E.O. 13526, and the result of the MDR, including any declassified records.

Items in part (D) should be prioritized at the same level as the record they apply to.”

TSA's Response

What follows is a summary of TSA's determinations regarding your request for records as well as your request for a fee waiver.

Determination Regarding Request for Records

Regarding “Item A, “TSA records slated for destruction” and all sub-items thereunder, this portion of your request is overly broad and does not reasonably describe the records sought as to allow agency personnel to locate them with a reasonable amount of effort. The request is insufficient because you do not explain, specifically, what records you are referring to by “all records”. The Records Disposition Schedule is arranged by subject with corresponding Series and Sub-series numbers. If you would like TSA to conduct a search, please provide additional information to reasonably describe what records you are seeking such as providing a specific subject, series or sub-series number. If we have not heard from you by January 8, 2019, we will administratively close this part of your request.

Regarding “Item B, all records relating to the fulfillment of this request,” this portion of your request is overly broad and does not reasonably describe the records sought so as to allow agency personnel to locate them with a reasonable amount of effort. The request is insufficient because you do not explain what records you are referring to by “all records relating to the fulfillment of this request.” Furthermore, per the FOIA, an agency is only required to search for responsive records in their possession and control at the time a search is conducted. If you would like TSA to conduct a search, please provide additional information to reasonably describe what records you are seeking that the agency has in its possession at the time a search is conducted. If we have not heard from you by January 8, 2019, we will administratively close this part of your request

Regarding “Item C and all sub-items thereunder, all records relating to any complaint(s), FOIA request(s)/appeal(s), and/or Privacy Act request(s)/appeal(s) made by you.” You have made this request before, and it is being processed under TSA FOIA 2015-TSFO-00336. To the extent you are requesting additional records, please identify dates, locations, case numbers, or other specific criteria that will enable TSA to conduct a search. In its current form, this portion of your request is not reasonably described so as to enable agency personnel to locate them with a reasonable amount of effort. Please provide additional information, as noted above, to clarify this portion of the request as soon as possible and no later than 30 working days from the date of this letter. If we have not heard from you by January 8, 2019, we will administratively close this part of your request.

Regarding “Item D and all sub-items thereunder, all responsive records.” This portion of your request would only be applicable if TSA was able to conduct a search for the records you are seeking. However, because we have determined your request is not reasonably described as set out above, we are unable to fulfill this portion of your request.

Should you provide additional information such that your request becomes reasonably described, we would determine that your request meets the “Unusual Circumstances” criteria of the FOIA due to one or more of the following:

- There is a need to search for and collect records from separate offices;
- There is a need to search for, collect, and examine a voluminous amount of records; or
- There is a need for consultations with another agency or among two or more components within the same agency.

Therefore, we will not be able to complete the processing of your request within 30 working days (20 working days plus 10 additional business days allowed for “unusual circumstances”). If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, please contact the analyst who is processing your request. You may send an e-mail to foia@tsa.dhs.gov, call 571-227-2300 or toll free 1-866-364-2872, or you may contact our FOIA Public Liaison in the same manner.

Determination Regarding Fees

You have requested a fee waiver. You also indicated in your letter that you were not willing to pay fees for the processing of this request but may be willing to pay if it is necessary.

As it relates to your fee waiver request, I have reviewed your letter and have determined that you have not presented a convincing argument that you are entitled to a blanket waiver of fees.

Per DHS FOIA Regulations, 6 CFR § 5.11(k), a component may reduce or waive fees when it is determined, (i) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requester.

To determine whether the first fee waiver requirement is met, components will consider the following factors:

- (i) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.” The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

- (ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.
- (iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.”
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

To determine whether the second fee waiver requirement is met, components will consider the following factors:

- (i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- (ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met.

Based on my review of your October 26, 2018, letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because your request for a fee waiver has failed to meet all factors per DHS FOIA Regulations, 6 CFR § 5.11(k) as required. Specifically, for the items you requested, you failed to detail with any specificity the informative value of the information being requested; how it will likely to contribute to an understanding of government operations or activities; how it will contribute to public understanding, or how it will contribute significantly to public understanding of government operations or activities. Also, your intent to share this info with the media does not entitle you to a public interest fee waiver.

Furthermore, your request to be recognized as “a representative of the news media” for the purpose of assessing fees is also denied for failure to meet the statutory definition of “a representative of the news media” in the OPEN Government Act of 2007. Per the OPEN Government Act of 2007, a “representative of the news media” is defined as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience; defining “news” as “information that is about current events or that would be of current interest to the public.”

You stated in your request, “I intend and am able to host and publish all received records online to the general public at no charge, as well [as] publish highlights, analyses, summaries, commentaries, and other creative, original journalistic work about responsive records through multiple online publications, such as <https://plus.google.com/+saizai>, and <https://twitter.com/saizai>, [and] <http://s.ai/foia> (among others)”]; and further stating, “[you] have previously made journalistic publication, extractions, commentary, and analysis based on my FOIA/PA request.”

I have reviewed your internet sites and they do not show that you have “turned the raw materials into distinct work,” only that you have posted documents received via your FOIA requests. Merely making the

information received available to the public (or others) fails to meet the statutory definition of a representative of the news media nor is it likely to contribute significantly to public understanding of the operations or activities of the government. Furthermore, you have failed to provide any definitive examples of your “journalistic publications” or any commentary or analysis; and your intentions to do so are not enough. Simply being the publisher of a website is not sufficient for you to qualify for a journalistic fee waiver. Any personal benefit derived by you is not a consideration entitling you to a fee waiver. Also, agencies take into account the identity and qualifications of the requester in order to determine whether the public would benefit from disclosure to that requester. You assert that you have “previously made journalistic publication, extraction, commentary, and analysis based on [your] FOIA/PA requests.” My review of your internet sites at <https://s.ai/essays/>, <https://twitter.com/saizai> and your Google+ site shows that the bulk of your “publication” activity is best described as making records generally available, such as posting materials on an internet site, as opposed to the preparation and issuing of an article, book, journal, or other work for public sale or consumption. The majority of materials you have made available constitute otherwise unpublished academic work and essays as well as records obtained through FOIA requests. Furthermore, to the extent that any of your postings may have been picked-up and referenced by recognized news media outlets such action on their part does not enhance your claim to be “a representative of the news media.”

Opportunity for Administrative Appeal

In the event that you wish to appeal the determination regarding your request for a fee waiver, an administrative appeal may be made in writing to Kimberly Walton, Assistant Administrator, Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (CRL/OTE), Transportation Security Administration, 701 South 12th Street, West Building, W3-110S, Arlington, VA 20598-6033. Your appeal **must be submitted within 90 days** from the date of this determination. It should contain your FOIA request number and, to the extent possible, the reasons why you believe the initial determination should be reversed. In addition, the envelope in which the appeal is mailed should be prominently marked “FOIA Appeal.” Please note that the Assistant Administrator’s determination of the appeal will be administratively final.

Additionally, you have the right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5796.

If you have any questions pertaining to your request, please feel free to contact the FOIA Branch at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,



Teri M. Miller
FOIA Officer